IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 919 of 2000()

OPMV.249/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANTS/PETITIONERS:
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1. JOSEPH, S/O.ESTAPPAN,
PUTHUSSERIYIL, P.O.NUCHIYAD.

2. ALEYKUTTY, D/O.CHACKO, -DO- -DO.

3. ANEY, D/O.JOSEPH, -DO- -DO.

4. JAMES, S/O.JOSEPH, -DO- -DO-.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS/RESPONDENTS:
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1. JOSE THOMAS, S/O.THOMAS,
THOTTUVYIL HOUSE, P.O.ULIKKAL.

2. SUNNY THOMAS, S/O.THOMAS, -DO- -DO-.

3. ORIENTAL INSURANCE CO. LTD., KANNUR.

BY ADV. SRI.A.K.SRINIVASAN FOR R1 & R2
SRI.P.V.JYOTHI PRASAD FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.919 OF 2000

Dated 28th May, 2007

JUDGMENT

Koshy,J.

A 26 year old unmarried person died in a motor accident and his parents, sister and brother filed claim petition claiming an amount of Rs.3,00,000/=. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company and directed the insurance company to pay a total compensation of Rs.1,10,000 with 12% interest. The accident was on 18.12.1994 and the award was passed only on 17.2.2000. According to the appellants, the deceased was a Carpenter and earning Rs.2,000/= per month. A certificate from the Panchayat was produced to show that he was a Carpenter. But, the Tribunal correctly found that there is no evidence to show that he was a Carpenter and there is no evidence to show his earnings and Rs.1,500/= was fixed as the monthly income. The Tribunal also noticed that since his age was 26, he is likely to marry immediately and, therefore, for four years one third income was deducted for finding out the dependency compensation. After marriage, since the parents, brother and sister may not get the same dependency from the deceased, after four years dependency compensation was

calculated by deducting two third of the income. Taking the age of the mother, 13 was fixed as the multiplier and calculated the compensation. We see no ground to interfere in the calculation made by the Tribunal. However, we note that even though the accident occurred on 18.12.1994, he died only after two days. He was fighting for his life and considering the nature of injuries, he has suffered limitless pain during the above period and, therefore, we are of the view that the Tribunal ought to have granted Rs.10,000/= for pain and suffering. We see no ground to interfere with the other grounds. The additional amount of Rs.10,000/= should be deposited by the third respondent insurance company with 9% interest from the date of application till its deposit, over and above the decreed amount. On deposit of the amount, appellants 1 and 2 are allowed to withdraw the same.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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